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A Professional Corporation

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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

AT&T Corp.

PLAINTIFF,

v.

Dataway, Inc.

DEFENDANT.

**CASE NO. : C07-02440 SC**

**DECLARATION IN SUPPORT OF  
MOTION TO SET ASIDE ENTRY OF  
DEFAULT**

**Date: Friday, October 12, 2007**

**Time: 9 a.m.**

**Courtroom: No. 7**

**Judge: Honorable Judge Maxine M. Chesney**

I, SIMON LEWIS Agent for Service of Process for Defendant Dataway, Inc, declare:

1  
2 1. I, SIMON LEWIS, am the Agent for Service of Process for  
3 Defendant Dataway, Inc.

4 2. I, SIMON LEWIS, am Co-President of Defendant  
5 Dataway, Inc, and as such I am one of only two officers.

6 3. After July 24, 2006, I, SIMON LEWIS, spoke with AT&T  
7 technical team in New Jersey and was assured that it would waive the charges for the  
8 fraudulent calls once Dataway disputed them because "they were very familiar with this  
9 kind of phone hacking and advised at the time of the illegal calls that this was epidemic,  
10 that they could easily see this pattern of illegal usage and that these charges would be  
11 waived.". Subsequently, the request to waive the disputed calls was submitted by  
12 Dataway, Inc. yet in multiple additional correspondence AT&T sent Past Due Reminders  
13 and a notice to disconnect for Dataway's Account.

14 4. Prior to November 1, 2006, Francisco Molieri, Dataway, Inc.'s  
15 Accountant, on my instructions, contacted and informed AT&T as well as AT&T's local  
16 managers, and four administrative authorities amongst them F.C.C. and C.P.U.C..  
17 Further, Dataway submitted to AT&T it's Fraud Resolution form with supporting  
18 documentation. On January 17, 2007 AT&T was served by F.C.C. with Dataway's  
19 informal complaint. In January, 2007 Dataway was notified that its case had been  
20 referred to C.P.U.C..

21 5. From prior to July 10th through July 14th, 2007 I, SIMON LEWIS,  
22 was out of the state on business and the only other officer of Dataway, Inc., Eoghan  
23 O'Neill broke his foot, requiring surgery and thus was not in the office.

24 6. On July 11, 2007 Francisco Molieri, Dataway, Inc.'s Accountant,  
25 a position which is not an officer of Dataway, Inc., when Simon Lewis was out of the  
26 state, was called out to the reception area in the early afternoon. Mr. Molieri, the  
27

1 receptionist and one other employee learned from the individual in the lobby that he was  
2 attempting to serve a summons on Simon Lewis as Agent of Process for Dataway, Inc..  
3 Mr. Moleri interacted and refused to take the documents and informed the process server  
4 he would need to come back the following week after Simon had returned to give him  
5 those documents personally. Further, the process server said "I was just going to shuffle  
6 them from under the door", to which Mr. Moleri replied "do as you must but I am not  
7 accepting these documents", he then proceeded to drop the summons, complaint and the  
8 court documents including only Judge Conti's recusal on Dataway's front counter and  
9 left, where he took them from after the process server had left the premises. Mr. Moleri,  
10 brought the documents to me and my attention for the first time on July 16, 2007 my first  
11 day back in the office after over a three week work absence. The Reassignment Order and  
12 new Case Management dates were not amongst these documents.

13 7. On August 1, 2007 Francisco Moleri, Dataway, Inc.'s Accountant, on  
14 my instruction, delivered, without any legal assistance a Letter of Appeal to the  
15 Consumer Affairs Bureau at C.P.U.C..

16 I declare under penalty of perjury under the laws of the State of  
17 California that the foregoing is true and correct, if called upon to testify, I could or  
18 would competently testify thereto and that this declaration was executed this 29<sup>th</sup>  
19 day of August 2007, at San Francisco, California.

20  
21 DATED: August 29, 2007

22 Respectfully Submitted,

23  
24 

25 SIMON LEWIS  
26 Agent for Service of Process  
27 For Defendant Dataway, Inc